

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

Filed: March 3, 2000
Staff: ALK-LB
Staff Report: May 25, 2000
Hearing Date: June 13-16, 2000
Commission Action:

**STAFF REPORT AND RECOMMENDATION ON APPEAL
DE NOVO COASTAL DEVELOPMENT PERMIT**

APPEAL NUMBERS: A-5-LGB-00-078 and A-5-LGB-00-079

LOCAL GOVERNMENT: City of Laguna Beach

DECISION: Approval with Conditions

APPLICANT: Five Star Resort, LLC **AGENT:** Athens Group

PROJECT LOCATION: 30801 Coast Highway, Laguna Beach (Orange County)

PROJECT DESCRIPTION: The applicant is proposing 1) subdivision of a 30-acre coastal blufftop lot, construction of master utilities and backbone infrastructure and 2) development of a 275-room resort, 14 condominiums and public park areas for the Treasure Island Destination Resort Community Project.

SUMMARY OF STAFF RECOMMENDATION

At a public hearing on April 11, 2000, the Commission determined that **a substantial issue existed** with respect to the local government's approvals of the proposed development on the grounds that the approvals did not conform to the Treasure Island certified Local Coastal Program (LCP). The major issues of the substantial issue staff report were blufftop grading and landform alteration and implementation of the adopted Resources Management Plan (RMP). Other issues evaluated include water quality; public access and recreation; community character and design; scenic and visual resources and acreage inconsistencies.

Staff recommends that the Commission, after a public hearing, **approve a de novo coastal development permit** for each component of the proposed development with ten (10) special conditions requiring: 1) retention of the local government conditions of approval; 2) submittal of revised plans demonstrating conformance with the required blufftop setback; 3) relocation of the blufftop accessway as needed; 4) no future shoreline protective devices for the resort of residential development, 5) recordation of an assumption-of-risk deed restriction; 6) implementation of the Resource Management Plan (RMP); 7) grant of responsibility for sewer, storm drain and diversion; 8) a written agreement for acceptance of nuisance flow diversion; 9) submittal of a Stormwater Monitoring Plan and 10) submittal of revised Water Quality Management Plan (WQMP). The primary issues of this development are blufftop grading and landform alteration, marine resources, water quality and public access.

PROCEDURAL NOTE:

The action currently before the Commission is the de novo portion of the appeals of two (2) local coastal development permits for development located within the jurisdiction of the certified Treasure Island Local Coastal Program (LCP) in the City of Laguna Beach. The Commission's standard of review for the proposed development is the certified Treasure Island LCP.

The current de novo staff report and recommendation analyzes both components of the Treasure Island development including 1) the subdivision, master utilities and backbone infrastructure and 2) the resort, condominiums and park areas. Although the staff report combines the analyses for the two components of the proposed Treasure Island development, the Commission must vote separately on each. The two necessary motions are provided on page 3.

SUBSTANTIVE FILE DOCUMENTS:

- City of Laguna Beach Local Coastal Program (LCP) for Treasure Island Resort and Destination Community Project.
- Final Program Environmental Impact Report (FEIR) and Mitigation Monitoring Program for the LCP and Treasure Island Specific Plan adopted June 8, 1998.
- FEIR Addendum dated September 29, 1999.
- City of Laguna Beach Administrative Record for Coastal Development Permits Nos. 99-75, 99-76, 99-78 and 99-79.
- California Coastal Commission Adopted Revised Findings on the City of Laguna Beach Local Coastal Program amendment 1-98 for the Treasure Island Area of Deferred Certification as Approved by the Commission on August 13, 1998 (Revised Findings adopted November 6, 1998).
- Supplemental Consultations from Law Crandall dated April 19, 2000 and May 17, 2000

LIST OF EXHIBITS:

1. Regional Location Map
2. Vicinity Map
3. Project Plans and Elevations
4. LCP Specific Plan Map
5. Conditions of City of Laguna Beach CDP No. 99-75 for subdivision, master utilities and backbone infrastructure
6. Conditions of City of Laguna Beach CDP No. 99-76 for development of resort, condominiums and park
7. Public Correspondence
8. Depth of Existing Fills Map
9. Memorandum from Mark Johnsson, Coastal Commission Senior Geologist,

dated May 22, 2000.

10. Depth of Cut and Fill Map
11. Earthwork Quantity Calculation Map
12. Limits of Grading vs. 45% Blufftop Delineation
13. Letter from Law Crandall dated March 24, 2000
14. Letter from Keith Companies dated March 24, 2000
15. Letter from Fire Chief
16. Proposed View Corridors
17. Allowable Building Footprint under LCP
18. Proposed Building Footprint
19. FEIR Top of Bluff Figure
20. Letters (2) from Law Crandall dated April 19, 2000
21. Resource Management Plan Map with Identification of Marine Reserve
22. City of Laguna Beach CDP No. 99-78
23. City of Laguna Beach CDP No. 99-79
24. Water Quality Measures ("Attachment A")
25. Applicant's Description of Project Water Quality Improvements
26. Letter from South Coast Water District dated May 25, 2000
27. LCP Public Access and Recreation Plan

I. MOTIONS AND RESOLUTIONS:

A. MOTION AND RESOLUTION FOR DE NOVO PERMIT NO. A-5-LGB-00-078

The staff recommends that the Commission make the following motion and adopt the following resolution:

Motion: ***I move that the Commission approve CDP No. A-5-LGB-00-078 pursuant to the staff recommendation.***

Staff Recommendation:

Staff recommends a **YES** vote. Passage of this motion will result in adoption of the following resolution and findings. The motion passes only by affirmative vote of majority of the Commissioners present.

Resolution to Approve CDP No. A-5-LGB-00-078:

The Commission hereby **GRANTS** a permit, subject to the conditions below, for the proposed development on the grounds that, as conditioned, the proposed development, located between the first public road and the sea, conforms to the requirements of the Treasure Island certified Local Coastal Program and that the development will not have any adverse impacts on the environment within the meaning of the California Environmental Quality Act.

B. MOTION AND RESOLUTION FOR DE NOVO PERMIT NO. A-5-LGB-00-079

The staff recommends that the Commission make the following motion and adopt the following resolution:

Motion: ***I move that the Commission approve CDP No. A-5-LGB-00-079 pursuant to the staff recommendation.***

Staff Recommendation:

Staff recommends a **YES** vote. Passage of this motion will result in adoption of the following resolution and findings. The motion passes only by affirmative vote of majority of the Commissioners present.

Resolution to Approve CDP No. A-5-LGB-00-079:

The Commission hereby **GRANTS** a permit, subject to the conditions below, for the proposed development on the grounds that, as conditioned, the proposed development, located between the first public road and the sea, conforms to the requirements of the Treasure Island certified Local Coastal Program and that the development will not have any adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS:

1. Retention of Local Government Conditions of Approval

The conditions of approval for CDP No. 99-75 approved by the Laguna Beach City Council on February 15, 2000 and the conditions of approval for CDP No. 99-76 approved by the Laguna Beach City Council on January 11, 2000, and subsequently approved by the Laguna Beach Joint Planning Commission and Design Review Board on February 16, 2000 that are not in conflict with the Commission's special conditions listed below are incorporated by reference and shall remain in effect. For purposes of condition compliance, the City of Laguna Beach shall be responsible for reviewing and determining compliance with special conditions imposed through CDP No. 99-75 and CDP No. 99-76 as contained in Exhibits 5 and 6.

2. Conformance with Blufftop Setback

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and approval of the Executive Director, a revised Tentative Parcel Map and project plans which conform to the following requirements.
 - 1.) The plans shall demonstrate that all development conforms to the 25' blufftop setback plus 20' blufftop retreat setback as measured from the existing (pre-grading) top of bluff, as defined in the certified LCP.
 - B. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.
3. Relocation of Blufftop Accessway
- A. By acceptance of this permit, the applicant and landowner further agree, on behalf of themselves and all other successors and assigns, that the landowner shall remove and relocate the blufftop accessway in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions or other natural hazards in the future. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such relocation shall require a coastal development permit. At which time, the Commission shall also determine whether the blufftop park shall also be extended landward into the 20' blufftop retreat setback if park acreage is significantly reduced.
 - B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition. The deed restriction shall include a legal description of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.
4. No Future Shoreline Protective Device
- A. By acceptance of this permit, the applicant agrees, on behalf of himself and all other successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the resort facilities or residential development approved pursuant to CDPs A-5-LGB-00-078 and A-5-LGB-00-079, including future improvements, in the event that the property is threatened with damage or destruction from waves, erosion, storm conditions or other natural hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of

himself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, which reflects the above restriction on development. The deed restriction shall include a legal description of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

5. Assumption of Risk

- A. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from waves, bluff retreat and erosion; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition. The deed restriction shall include a legal description of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

6. Implementation of Resource Management Plan and Nomination of State Marine Park

- A. The permittee, in conjunction/concurrence with the City of Laguna Beach, shall implement the Resource Management Plan approved by CDP No. 99-78, approved by the City of Laguna Beach on December 1, 1999.
- B. The permittee, in conjunction/concurrence with the City of Laguna Beach, shall ensure the nomination of the offshore area as a State Marine Managed Area as required by CDP No. 99-79, approved by the City of Laguna Beach on December 1, 1999.

7. Year Round Nuisance Flow Diversion

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall obtain, and submit to the satisfaction of the Executive Director, a binding statement from the South Coast Water District, verifying the District's capacity and commitment to accept nuisance flow runoff [up to a maximum of 10,000 gallons per day (GPD)], on a year-round basis from the project site and the 60 acre drainage area above the site, upon project completion, for treatment in the wastewater collection system at the Coastal Wastewater Treatment Plant. Diversion, as specified above, shall commence upon completion of the project, and prior to the opening of the resort, and shall continue for the life of the development.
 - B. The permittee shall divert all nuisance flows in accordance with the specifications above. The permittee in conjunction/concurrence with the South Coast Water District shall construct all necessary infrastructure for diverting nuisance flows as described in the Water Quality Management Plan required herein. Any proposed changes to the approved diversion program described in the Water Quality Management Plan required herein shall be reported to the Executive Director by the appropriately designated entity, as described in Special Condition 8 of this permit. No changes to the approved program shall occur without an amendment to this coastal development permit unless the Executive Director determines no such amendment is required.
 - C. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition. The deed restriction shall include a legal description of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.
8. Responsibility for Sewer, Storm Drain and Diversion and Sediment Removal Systems
- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall demonstrate, to the satisfaction of the Executive Director, that a responsible entity has been granted the authority through a binding agreement to act on behalf of the Homeowners Association and Resort Owner/Operator in all requirements pertaining to sewer, storm drain and diversion and sediment removal systems at the project site as set forth in the project description for the City's approval of CDP 99-75 and/or CDP 99-76, and the Water Quality Management Plan required herein.
 - B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition. The deed restriction shall include a legal description of the applicant's

entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

9. Stormwater Monitoring Plan

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a Stormwater Monitoring Plan for the review and approval of the Executive Director. The Plan shall be designed to meet the following criteria, and shall include at a minimum, the following components:
- 1) The Plan should include methods for acquiring the type of data necessary and appropriate to allow for analysis of stormwater impacts over a five-year period, if any, on the marine resources in the City-designated Marine Reserve as depicted in Exhibit 21.
 - 2) The Plan should be prepared and/or reviewed by a biologist or ecologist with expertise in the field of coastal water quality monitoring program design.
- B. The permittee, in conjunction/concurrence with the City of Laguna Beach, shall implement the Stormwater Monitoring Plan described above. Any proposed changes to the Plan shall be reported to the Executive Director. No changes to the approved Plan shall occur without an amendment to this coastal development permit unless the Executive Director determines no such amendment is required.

10. Revised Water Quality Management Plan (WQMP)

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a revised Water Quality Management Plan (WQMP) for the review and approval of the Executive Director. The Plan shall be revised based on the following criteria, and shall include at a minimum, the following components:
- 1) The water quality measures 1 through 10 proposed by the applicant in "Attachment A", as provided in Exhibit 24 of the current staff report, shall be incorporated into the Water Quality Management Plan (WQMP).
 - 2) The Plan shall be revised to be consistent with all final conditions of approval contained and incorporated by reference herein pertaining to proposed and required water quality management measures, including those applicable the Year Round Nuisance Flow Diversion program described in Special Condition 7.

- B. The permittee shall implement the water quality measures in accordance with the revised Water Quality Management Plan (WQMP). Any proposed changes to the WQMP shall be reported to the Executive Director. No changes to the approved program shall occur without an amendment to this coastal development permit unless the Executive Director determines no such amendment is required.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. Project Location, Description, and Background

Project Location

The subject site is located in the southern portion of the City of Laguna Beach on the seaward side of Pacific Coast Highway just north of Aliso Beach (Exhibits 1 and 2). The approximately 30-acre coastal blufftop lot was previously used as a private 268-space trailer park. The site has been vacant since 1997, but many trailers remain on site.

Project Description

The applicant is proposing to subdivide and develop the subject site as a 30-acre resort and residential project, known as the Treasure Island Destination Resort Community. Specifically, the first segment of the proposed project involves the grading, construction of master utilities and backbone infrastructure improvements, and the subdivision of the site into large parcels for financing and/or conveyance to the City and/or other public agencies. The second portion of the project involves construction-level detail for the resort and its associated residential and public uses, including a 275-room resort, 14 condominiums, 17 single-family residential lots, and a blufftop park (Exhibit 3).

Project Background

On August 13, 1998, the Coastal Commission approved the Treasure Island Local Coastal Program (LCP) as a project specific amendment to the City of Laguna Beach Local Coastal Program. The site was previously an Area of Deferred Certification pending the resolution of public access concerns. The certified LCP allows for development of the site with a resort complex consisting of a resort center on 10.63 acres with 200-275 visitor-serving accommodations provided in a hotel, resort villas, and residence villas (condominiums). The certified LCP also allows for future residential development of up to 18 single-family residences and provides public benefits, including the dedication of nearly 14 acres into public ownership and the enhancement of public access throughout the site (Exhibit 4).

Local Approvals

As set forth in the Treasure Island LCP, all development within the project site is subject to City approval of a Master and/or Project-level coastal development permit (CDP). Pursuant to the certified LCP, the applicants submitted CDP applications for the proposed development to the City of Laguna Beach in September 1999. The City held multiple public hearings between September 1999 and February 2000 prior to project approval.

On January 11, 2000, the City of Laguna Beach City Council held a public hearing on the proposed project. At the conclusion of the public hearing, the City Council approved with conditions local CDP No. 99-76 for the resort, condominiums and park areas associated with the Treasure Island development, finding that the project, as conditioned, conformed to the City's certified LCP for Treasure Island.

On February 15, 2000, the City of Laguna Beach City Council held a public hearing on the proposed project. At the conclusion of the public hearing, the City Council approved with conditions local CDP No. 99-75 for the subdivision, master utilities and backbone infrastructure for the Treasure Island development, finding that the project, as conditioned, conformed to the City's certified LCP for Treasure Island.

Pursuant to Condition No. 1 of CDP No. 99-76, a subsequent approval by the Joint Planning Commission and Design Review Board was required before the City Council's approval became final. At the conclusion of the public hearing held on February 16, 2000, the Joint Planning Commission and Design Review Board granted conditional approval of CDP No. 99-76.

The City's original conditions have been included as Exhibits 5 and 6. Where they do not conflict with the Commission's conditions, the City's conditions for CDP No. 99-75 and CDP No. 99-76 have been incorporated by reference into the current Commission-issued coastal development permits as Special Condition No. 1.

Appeal of Local Approvals

The Commission received notices of final local action on CDPs 99-75 and 99-76 on February 17, 2000. CDP No. 99-75 (assigned appeal no. A-5-LGB-00-078) approved the subdivision, master utilities and backbone infrastructure and CDP No. 99-76 (assigned appeal no. A-5-00-LGB-00-079) approved the construction of the resort, condominiums and park areas.

By March 3, 2000, within ten working days of receipt of the notices of final action, five (5) parties had appealed the local actions on the grounds that the approved project does not conform to the requirements of the certified LCP. Appellants included Village Laguna, South Laguna Civic Association, Orange County CoastKeeper, John Gabriels and Eugene R. Atherton. The three organizations appealed both local actions, while the two individuals appealed only CDP No. 99-76 for the construction portion of the project.

At a public hearing on April 11, 2000, the Commission determined that a substantial issue existed with respect to the local government's approvals of the proposed development on the grounds that the approvals did not conform to the Treasure Island certified Local Coastal Program (LCP). The major issues addressed in the staff report were blufftop grading and landform alteration and implementation of the adopted Resources Management Plan (RMP). Other issues evaluated include water quality; public access and recreation; community character and design; scenic and visual resources and acreage inconsistencies.

Public Comment

Since the substantial issue hearing, numerous letters of support for the proposed project were received by staff. Proponents state that the project, as approved by the City of Laguna Beach, has undergone sufficient scrutiny at the local level, was approved in a special election by a

majority of citizens, and should proceed without further delay. A few letters of opposition were received as well. The opponents express concern over the proposed landform alteration, the density of the project as it relates to community character, and the amount of private vs. public land provided. Their concerns regarding landform alteration are addressed in Section D. Public access issues are discussed in Section G. Also, while the Commission found that community character concerns did not raise a substantial issue at the initial hearing stage, they are briefly discussed in Section I. All public correspondence received to date is attached as Exhibit 7.

B. Adoption of Substantial Issue Findings

The findings and declarations set forth in the substantial issue staff report are herein incorporated by reference. The substantial issue staff report discusses several issues raised by appellants that staff recommended did not raise a substantial issue regarding consistency of the project with the certified LCP. The Commission finds, for the reasons set forth in the substantial issue staff report and herein, that the issues discussed at pages 21 to 33 of the substantial issue staff report do not provide a basis for finding that the project is inconsistent with the Treasure Island certified LCP.

C. Standard of Review

The Commission's standard of review for the proposed development is the certified Treasure Island LCP. The certified Treasure Island LCP is comprised of the certified Land Use Plan (LUP) and the certified Implementation Actions Program (IAP).

Additionally, Section 30604 (c) of the Coastal Act requires that every coastal development permit issued for any development between the nearest public road and the sea shall include a specific finding that the development is in conformity with the public access policies of Chapter 3 of the Coastal Act.

D. Grading and Landform Alteration

At the substantial issue hearing, the Commission found that the project raised questions of consistency with the grading and landform alteration policies of the certified LCP based on the extent and quantity of grading required for implementation of the Treasure Island Destination Resort Community Project. In addition, a discrepancy was noted between the City's definition of "top of bluff" as compared to the definition provided in the certified LCP.

Presently, at the de novo hearing stage, the Commission must determine whether the proposed development is consistent with the grading and landform alteration policies approved by the Commission under the Treasure Island certified LCP. The following LCP policies pertaining to grading and landform alteration are used as the standard of review in the current analysis.

Treasure Island Certified LCP Policies

Section 3.2 (Physical Resources Policies) of the Treasure Island certified LCP sets forth geotechnical policies and includes technical information related to mitigation of geologic hazards and implementation of the Land Use Plan. The policies address soil conditions, existing artificial fill on the site and the stability of bluffs within and adjacent to the LCP area.

LCP policies 3.2.2-1 through 3.2.2-10 specify the required blufftop setbacks and identify the need for remediation of areas of artificial fill. Those LCP policies that relate to the current analysis include:

- Policy 3.2.2-4 Development above the coastal bluff shall be engineered to ensure that surface/subsurface drainage does not contribute to erosion or adversely affect the stability of the bluff. Any minor residual effects related to storm drainage improvements shall be mitigated by recontouring and revegetating to obtain a natural landform appearance.*
- Policy 3.2.2-5 Any bluff areas requiring landform and remedial grading and/or slope stabilization (e.g., to provide ADA-compliant coastal access that is safe for the disabled) shall be recontoured and revegetated with native and drought-tolerant plant material to obtain a natural landform appearance.*
- Policy 3.2.2-6 Development, including Bluff-top Park improvements adjacent to the bluff, shall be located and designed to minimize the alteration of the existing landform and the construction of artificial devices that, except during the demolition of the existing trailer park and initial mass and/or remedial grading, would substantially alter existing landforms, and to avoid and discourage people from leaving designated areas and paths to climb on the bluffs.*
- Policy 3.2.2-7 Bluff stabilization and remediation of areas of existing artificial fill associated with historic mobile home development, ramp construction, movie set construction, piers and slabs along the shoreline, and other previous grading and development, whether legally permitted or not, shall be allowed if otherwise the fill poses a public health and/or safety risk, if bluff stabilization/remediation is designed to minimize landform alteration, and if the bluff will be restored to a natural appearance through contour grading and landscaping consisting of native and drought-tolerant vegetation.*
- Policy 3.2.2-8 Within the interior of the site (i.e., the portion of bluff-top terrace that is 25 feet or more inland from the bluff face), remediation of existing artificial fill associated with historic mobile home development, archaeological investigations, road construction, and other previous grading and development, whether legally permitted or not, shall be allowed under*

certain conditions relating to archaeological find protection, if the remediation is designed to implement LCP-approved land use development.

In addition, the Flood Control and Hydrology Policies of Section 3 contains the following policy which also relates to the subsequent grading discussion:

Policy 3.2.2-16 The Resort Villas area of the site shall generally be graded to direct flow toward local street and away from the bluff. Sites that are too low to drain to the street shall be required to provide a private drainage system designed to protect and minimize significant adverse impacts on the marine environment and stability of the bluffs in conjunction with the City's review of the project-level CDP for the Resort Villas.

Chapter 9 (Resource Management Program) of the LCP outlines objectives and criteria to implement the policies contained in Chapter 3 (Resource Protection Policies) discussed above. The Resource Management Program, or RMP, provides requirements and regulations to serve as the Implementing Actions Program (IAP) for the Land Use Plan (LUP). The following RMP provisions discuss grading activities:

Section 9.1.2-2 Create a public Bluff-top park that protects the bluff face and bluff top resources while offering passive recreation and view appreciation of the coastal/marine resources from the top of the terrace.

Section 9.3.1-1a Grading—Grading activities within the coastal bluff shall be limited to that which is necessary to implement the Specific Plan, to remove the existing trailer park, to restore and protect a natural landform appearance within the disturbed area, to provide coastal access improvements as set forth in Section 11.6, to install required drainage and other backbone infrastructure improvements as set forth in Section 10.6, and to undertake a minimal amount of remedial grading necessary to undertake the above-referenced restoration/protection, public access ramp construction, and drainage improvements in such a way that will minimize the visual effect on the existing bluff landform.

Chapter 10 (Resort Development Concept) provides similar implementation provisions. The purpose of the Resort Development Concept is to conceptually describe the physical design and engineering of the project in terms of major public facilities and resort areas within the site.

Analysis of Proposed Grading and Landform Alteration

The subject site is an approximately 30-acre parcel, consisting of a blufftop area, bluff face, and sandy beach. The buildable portion of the site has a relief of about 20 feet and is adjacent to an approximately 60 foot high coastal bluff. The site is currently developed with a mobile home park that will be removed prior to development of the proposed Treasure Island Resort Community. The mobile home park sits on a significant amount of historic fill existent since the 1930s (Exhibit

8). As such, the applicant asserts that much of the site must be graded to remove the uncertified fill in order to accomplish the development goals of the certified LCP.

While the Commission recognizes that the site is known to have artificial fill that must be removed prior to site development, the amount and extent of grading currently proposed are at issue. The subsequent analysis discusses the consistency of the proposed project to the grading and landform alteration policies of the Treasure Island certified LCP approved by the Commission in 1998.

The Commission's technical staff has evaluated the current project and contributed to the current staff report and recommendation. The Commission's Senior Geologist has reviewed the consultant's geotechnical investigation and supplemental analyses, and conducted a site visit on May 5, 2000. The Commission's Senior Engineer also has evaluated the associated documents and met with the consultant's technical staff. The Commission's geologist concurs with the applicants' geotechnical consultants in that the proposed development, properly conditioned, will neither create nor contribute significantly to erosion, geologic instability or destruction of the site or surrounding area. He states in a memorandum dated May 22, 2000 (Exhibit 9), *"the principal structures should not be at risk from erosion over their anticipated economic lifespan (75 years). There are, however, a number of specific conditions that need to be applied to the development to ensure that this is the case."* These conditions have been incorporated into the current staff report where appropriate.

Quantity of Grading

The regulations and policies set forth in the Treasure Island LCP require that minimal landform alteration occur and limit the amount and location of grading allowed along the bluff top and bluff face. The applicant is proposing grading operations in excess of that estimated in the certified LCP and will grade beyond the existing top of bluff.

As approved in the LCP, the Conceptual Grading Plan discussed in Section 10.7.3 estimated that the project would *"generate approximately 105,000 cubic yards of cut and 65,000 cubic yards of fill, exclusive of grading required to remediate any uncompacted fills or geologically unstable areas within the interior of the historic trailer park."* However, as proposed, grading will involve approximately 230,000 cubic yards of mass earthwork, including remedial grading. Proposed grading operations are estimated to generate approximately 200,000 cubic yards of cut and 30,000 cubic yards of fill.

The amount of remedial grading was never identified at the LCP level; therefore, the quantities can not be compared with total accuracy. In addition, the term "remedial" is not defined in the certified LCP or the Final EIR. Nonetheless, as referenced in the LCP Regulations and Site Development Standards, it was understood at the LCP level that a coastal development permit would be required for *"remedial grading required to resolve geotechnical/soils engineering problems associated with the permitted development of this Planning Area and/or to satisfy engineering requirements for related infrastructure and other permitted uses and development."* As such, the applicant submitted to the City of Laguna Beach a more finalized grading plan for the local CDP. The current plan includes all proposed grading of the site, including that considered by the applicant to be "remedial."

The applicant and City have both asserted that the amount of grading proposed for implementation of the proposed project is consistent with the intent of the certified LCP. They state that the amount of grading now proposed is the minimum necessary to prepare the site for development of the proposed Treasure Island Resort Community Project. As evaluated by their technical consultants, Law Crandall,

“The fill at the site is of low quality and would not be considered certified fill. Based on our observations, it is highly unlikely that the artificial fill has been properly engineered. It appears that the height of the original bluff was raised on most areas using uncertified fill materials.”

Therefore, due to the amount of uncertified fill on the site, the consultants have recommended that much of the fill be removed prior to development. However, the Commission does not recognize all of the proposed grading to be remedial. Some of the proposed blufftop grading will occur in areas that were not previously developed with mobile homes (Exhibit 10). In addition, cut will extend into natural material beneath existing fill. As stated in Exhibit 9, the Commission’s staff geologist notes:

“The grading plan calls for nearly twice the grading approved in the LCP, which will result in over 200,000 cubic yards of cut in excess of fill. This grading cannot be considered remedial under the LCP, as it removes substantial amounts of natural materials (terrace deposits and bedrock) in addition to artificial fill.”

Thus, although the LCP does recognize that there would be some remediation and restoration grading within the park site in areas of previous mobile home development, the Commission must determine whether the amount of grading proposed goes beyond what is considered *“remediation and restoration.”* The Commission must also consider if the amount of grading proposed in excess of that required for “remediation and restoration” is necessary *“to satisfy engineering requirements for infrastructure and other permitted uses and development,”* as discussed on page 16. Finally, the Commission must decide if the site is considered a “natural landform” although a significant amount of fill has been placed on the site in conjunction with the mobile home park development.

As stated above, the technical staff has confirmed that the proposed grading within the interior portion of the site goes beyond that necessary to remove existing artificial fill. At the deepest point of cut within the interior segment of the site, the depth of grading will extend 30’ deep for the subterranean parking garage, well beyond the depth of fill and into natural material. However, the technical staff has indicated that grading along the bluff edge is limited to the removal of artificial fill, as further discussed in the “Extent of Grading “ section on page 18.

While the Commission notes that the LCP requires landform alteration to be minimized where possible, the LCP also allows *“remediation to accomplish the goals of the LCP-approved land use development,”* as stated in Policy 3.2.2-8. This includes grading of the bluff edge for removal of the mobile home sites, as well as the grading along the interior portion of the site for development of the hotel, condominiums and residential lots. The Commission notes that the majority of cut material is being removed from the interior of the site and will not affect an existing natural landform as the site has been substantially altered with development of the mobile home

park. As identified on Exhibit 11, much of the cut is required to accommodate the subterranean parking garage in the center of the site. The majority of cut will occur inland of the bluff edge. In all, the interior portions of the site (all areas except the Blufftop Park and bluff edge/face) account for 119,600 cubic yards of the approximately 200,000 cubic yards of total cut. This quantity (119,600 c.y.) is consistent with the estimate of approximately 105,000 cubic yards of cut identified in the LCP. The amount of material to be removed from the Blufftop Park (24,300 c.y.) and bluff edge (5,800 c.y.) is the minimum amount necessary to create a suitable walkway and park area, and therefore is allowable under the LCP.

The Commission finds that the proposed grading activities adjacent to the coastal bluff are limited to that which is necessary to implement the Specific Plan, to remove the existing trailer park, to restore a natural landform appearance within the disturbed area, to provide coastal access improvements, to install required drainage which prevents sheet flow over the bluff face and to construct necessary backbone infrastructure improvements. The applicant is proposing the minimal amount of remedial grading necessary to undertake the above-referenced restoration/protection, public access ramp construction, and drainage improvements in such a way that will minimize the visual effect on the existing bluff landform, as required by Section 9.3.1-1a of the LCP. Therefore, the amount of grading associated with the proposed project is consistent with the grading and landform alteration policies of the certified LCP.

Extent of Grading

The applicant proposes to grade beyond the top of bluff at various points along the project site, as shown on Exhibit 12. In addition, grading of the Blufftop Park area is now proposed, where the extent of grading approved in the Conceptual Plan of the certified LCP did not include the Blufftop Park area. The applicant contends that some amount of grading of the bluff edge was always considered necessary to remove areas of artificial fill and prepare the site for development. They also state that more detailed geotechnical analyses have resulted in a more refined, appropriately engineered grading plan than the originally approved Conceptual Grading Plan.

The applicant's geotechnical consultant has submitted information supporting the need for grading along the bluff edge as proposed. They assert that cut must occur along the bluff edge to remove existing fill, redirect runoff and accommodate the proposed accessway. Based on geologic borings, the depth of artificial fills along the edge of the bluff range from approximately 2' to 10'. While the proposed grading will not remove all artificial fills along the edge, an average of 5' will be removed, or approximately 5,800 cubic yards as shown on Exhibit 11. The geotechnical consultant for the applicant (Law Crandall) states that the removal of this amount of material will ensure stability of the accessway along the bluff edge and improve global stability of the slope. In their letter of February 2, 2000, they state:

"We understand that construction of a walkway near the top of the bluff is currently proposed and that it will primarily be for pedestrian use, but will also be used occasionally by emergency vehicles. As part of the grading for the site, it is proposed to lower the grade near the top of the bluffs in some areas.

For the support of the walkway, we recommend that all of the existing fill beneath the roadway be excavated. To reduce erosion of soils on the bluff, it is recommended that in some locations, the fill soils be removed. In addition, removal of the fill soils will

increase global stability of the bluff by reducing the weight on top of the natural materials.”

The geotechnical consultants add, “grading plans have been prepared to remove the minimum amount of artificial fill near the edge of the bluff” (Exhibit 13, Letter from Law Crandall dated March 24, 2000). The engineering consultants (The Keith Companies) also state the following in their letter of March 24, 2000 (Exhibit 14):

“It has been our intention to minimize the amount of grading along the bluff given the following requirements set forth in the Local Coastal Program:

- 1. Provide ADA access along the entire length of the park*
- 2. Provide emergency access to service the park and beach*
- 3. Park to be designed such that the drainage be directed on site as opposed to over the bluff*
- 4. Remove trailers and minimize remedial grading necessary to provide safe blufftop conditions*
- 5. Provide a safe and usable public park*

Additionally, the applicant’s representative (Athens Group) has stated that it was originally anticipated that the Bluff-top Park could be left in a natural, unaltered state. However, at the project-specific design level, it was determined that grading of the bluff-top area was necessary in order to provide a safe and usable park. Also, as stated by the City Manager in a letter dated March 10, 2000,

“The LCP (Policy 3.2.2 and Section 9.3.1) allows for remedial grading due to removal of mobile home basements and foundations, required drainage away from the bluff edge and elimination of the unconsolidated fill. This grading is essential to ensure a safe, usable park along the entire length of the property.”

City staff has also pointed out that it was through subsequent negotiations with the City of Laguna Beach Fire Department that the structural requirements of the blufftop accessway were determined. As discussed in a letter from the City of Laguna Beach Fire Chief, the bearing capacity of the accessway along the top of the bluff must be able to accommodate a 40,000-pound fire truck (Exhibit 15). As such, additional grading is required to remove uncertified fill and create an acceptable emergency access road.

The Commission’s technical staff concurs with the consultants’ analysis in that the proposed grading along the bluff edge will increase global stability, provide a safe and usable park area, meet ADA requirements and provide emergency vehicle access. The Senior Geologist offers the following:

“The grading along the bluff edge is a minor part of the entire grading plan proposed. Nevertheless, it is of concern because it has the greatest impact from a landform alteration perspective. The grading along the bluff edge is necessary if the walkway is to be graded so as to provide access for emergency vehicles and to meet ADA requirements. Additional blufftop grading is being performed to improve drainage, directing it away from the bluff edge, which is probably justifiable from the viewpoint of

increasing site stability. Some additional grading does appear to be mostly cosmetic in nature; this involves the smoothing of former building pads to eliminate a “stairstep” appearance to the park. While this grading is more difficult to justify from a “landform alteration” point of view, it involves mostly artificial fill and is minor in scope. Any alternatives for creating a “safe and useable park” also involve cut and fill. An elimination of net export from this area is perhaps feasible, but would likely result in greater landform alteration than grading in the form of cut, and export of excess material.”

The need for the proposed grading operations in this location has been well supported by the applicant, their technical staff and the City. In addition, the extent of grading has been reviewed by the Commission’s technical staff and found to be acceptable, as conditioned below, from a geologic and engineering point of view. Consequently, the Commission finds the proposed extent of grading to be consistent with the policies of the certified LCP.

Public Views and Building Height

Section 9.3.1-1a of the LCP allows grading to implement the development goals of the Treasure Island LCP. The LCP also requires the applicant to provide three reasonable public view corridors through the resort community, which, while not precluding development within the boundaries of the corridor, will require the maintenance of a preponderance of the existing ocean views (Policy 3.4.2-2). More specifically, the LCP requires the provision of three view corridors totaling 500 linear feet.

This applicant proposes development of the site with a resort, condominiums and single-family residential lots subject to the specified maximum height restrictions and view preservation requirements. A review of the project plans reveals that the approved project conforms to these height restrictions and contains view corridors totaling 550 linear feet (Exhibit 16). As such, the project has been consolidated in the current project submittal, thereby providing a 50’ larger view corridor.

The conceptual resort development approved under the LCP occupied a larger building footprint than the proposed project, as illustrated in Exhibits 17 and 18. In addition, in the current project, fifty percent of the proposed buildings along Coast Highway will be below the elevation of the highway. The applicant indicates that a portion of the building area compaction can be attributed to excavation and subterranean development. In addition, the grading plan provides terraced building pads, as required by the LCP. The Commission recognizes that additional grading allows for a “lower” structure. Specifically, the resort entrance with subterranean garage sited adjacent to Coast Highway remains within the building height restriction through considerable site excavation. Nonetheless, the proposed project is consistent with the height requirements of the LCP and allows the applicant to provide greater public viewing opportunities.

Consequently, the amount of grading proposed within the interior of the site is consistent with the certified LCP requirements for height restrictions and public view preservation, as discussed above.

Top of Bluff Delineation and Blufftop Setback

As defined in the certified LCP, the “top of bluff” is the point of the slope profile where the gradient of the ground surface exceeds 45 percent (24 degrees). This definition is illustrated in Figure 4.1.11 of the FEIR for the Treasure Island Destination Resort Community (Exhibit 19).

As previously shown in Exhibit 12, the applicant is proposing to grade beyond what is defined as “top of bluff” in the Treasure Island certified LCP. While the LCP includes policies which require grading activities to be limited to that which is necessary to accomplish certain resource protection and development goals, it does not contain a policy prohibiting grading over the edge of bluff. Nevertheless, when the Commission certified the LCP in 1998, bluff retreat and appropriate blufftop setbacks were of primary concern. The Commission required a twenty-foot (20’) “Bluff Retreat Easement” in addition to the proposed twenty-five foot (25’) blufftop setback to ensure safety and minimize risks of geologic hazard. At the LCP hearing, the Commission noted that a 20’ additional setback would provide greater protection to the park and hotel, while offering greater privacy to the residences.

The applicant has submitted a Tentative Tract Map for the subject site, which identifies the 25’ setback and 20’ bluff retreat easement. The proposed building footprints are provided on the map. Generally, the Tentative Tract Map demonstrates that the proposed development conforms to the required blufftop setbacks. However, the Commission notes that an improper point of measurement was applied. The setback should be measured from the “top of bluff” prior to proposed site grading, rather than after. (The edge of bluff, or “top of bluff,” is measured at the point that the slope breaks at a 45% (24-degree) angle.) As such, a portion of the development is located further seaward than allowable.

All of the proposed structures along the northern and central portion of the blufftop are located at least 45’ from the edge of bluff. However, at the southernmost segment of the hotel resort, the structure is sited closer than 45’ from the top of slope. It appears as though the “post-grading” top of slope point was used to calculate the required setback. The Commission recognizes that the grading will lower the elevation of the site, thereby providing slightly more building area. To ensure that greater buildable acreage is not created through the sacrifice of bluff face acreage, the Commission must ensure that the “pre-grading” blufftop delineation be applied in all setback determinations.

In the current proposal, the corner of the hotel encroaches approximately 10’ into the setback area. As the bluff retreats in this location, the hotel will be subject to increased risks of geologic instability if not sited appropriately. The Commission’s geologist states,

“LAW/CRANDALL estimates a bluff retreat rate ranging from 0.25 to 3.5 inches per year, based on comparison of topographic contours derived from 1937 and 1997 surveys. The primary structure closest to the bluff edge, as defined above, is a corner of the main hotel building near it’s southern end. This corner is located approximately 35 feet from the bluff edge, near a part of the bluff where some of the highest retreat rates were measured. The highest calculated rate of retreat results in about 22 feet of retreat in 75 years. Although this amount of retreat would not place the structure at risk, it leaves little margin for safety if the calculated retreat rate is in error or if bluff retreat accelerates. Further, bluff retreat at this location would certainly threaten the ADA walkway, and with the existing building

setback there is very little room for its relocation. Redesign of this corner of the hotel to increase blufftop setback might be appropriate.”

Therefore, the project is inconsistent with the LCP setback requirement and cannot be approved as proposed. To minimize risks from geologic hazard, the Commission imposes Special Condition No. 2, which requires the applicant to submit revised plans, for the review and approval of the Executive Director, demonstrating that the structure has been pulled back to accommodate the 25' setback and 20' Bluff Retreat Easement based on the pre-grading “top of bluff.” With this condition, the project is consistent with the LCP setback requirement.

Acreage Inconsistencies Associated with Increased Grading

At the substantial issue hearing, Commission staff recommended that the land use acreages be found in substantial conformance with those approved in the LCP. However, for further clarification, the following section addresses the assertion that there is 0.6 acres less of marine reserve, sand beach and bluff face than indicated in the LCP. In information submitted to the Commission and through subsequent discussions with staff, the appellants state that the increased blufftop grading provides more buildable land and decreases the size of the park areas. They provide the following comparison of acreages approved in the LCP and currently proposed:

	LCP	Approved Project	Difference
Marine Reserve	3.55 acres	3.31 acres	-0.24 acres
Sand Beach	2.70 acres	2.45 acres	-0.25 acres
Bluff Face	2.94 acres	2.83 acres	-0.11 acres
			-0.60 acres

The City responded to the appellants' claim by stating that the differences are due to a revised certified topographical survey. While the appellants propose that the landowner dedicate the area amounts specified in the LCP, this is physically impossible, according to the City. They provide the following explanation in their letter of March 17, 2000:

“Fixed points determine the area boundaries. For instance, the marine reserve and beach areas are areas encompassed from the toe of bluff face slope to mean high tide. If an updated survey shows smaller amount of land areas due to sand elevation shift, then there are physically smaller areas. Additionally, an independent 3rd party engineer hired by the city confirmed that acreage fluctuations between various topographic surveys are common for coastal properties.”

While the Commission recognizes that slightly less acreage will be dedicated to public use, the difference is negligible and has been appropriately mitigated through public benefits elsewhere, including the creation of additional open space between the residential development and the resort. The amount of grading to occur along the blufftop will not result in additional developable area, as the previously-certified blufftop delineation will be applied to the current development, consistent with the intent of the Treasure Island LCP. At the time the Commission certified the LCP, the park setbacks were established based on “top of bluff” determinations, not specific acreage requirements. The 25' setback plus 20' bluff retreat easement established in the LCP will

still be used to determine all inland development. As such, the resort and residential portion of the project will not be acquiring additional acreage through grading activities.

Stability of Walkway

Since the substantial issue hearing, supplemental information has been submitted by the applicant's consulting engineer and geologist regarding the stability of the walkway and the bluff retreat rate. In a supplemental consultation letter dated April 19, 2000 (Exhibit 20), the consultant states that some areas of uncertified fill with a thickness of more than 5 feet beneath the proposed walkway will remain even after the proposed grading. Therefore, the consultant recommends the placement of drilled piles to support the walkway. As stated in the supplemental consultation:

"In areas of thick existing fill, where excavation and recompaction would be impracticable, walkways may be supported on drilled cast-in-place concrete piles."

The Commission's technical staff initially questioned the structural design of the ramp and accessway along the bluff edge. The piles required to support the proposed accessway and ramp extend to a depth of 10 feet into the bluff. This need for such extensive engineering of the pedestrian walkway raises questions about its long-term stability. However, after subsequent consultation with the applicant's consultants, the Commission's technical staff accepted the siting and engineering of the ramp, so long as a condition is incorporated which requires its relocation if necessary. As stated by the Commission geologist in Exhibit 9:

"The slope stability analyses indicate that portions of the upper bluff, especially those where the existing artificial fill is at its thickest, are likely to experience surficial failures and retreat rates more rapid than the 0.25 to 3.5 inches per year calculated above, which was calculated at the 30 and 50 foot contours, below the level of most of the artificial fill. While such surficial failures are not likely to threaten principal structures within their economic lifetime, they will very likely threaten the park, the ADA walkway, access ramps, and drainage control structures. Such failures should be anticipated, and structures that may be threatened by them should be designed so that they may be easily moved landward as the bluff edge encroaches upon them. The CDP should be conditioned to prohibit the construction of shoreline protective devices to protect secondary structures."

In the event that the subterranean structural supports are exposed, the blufftop accessway would present a potential hazard, as well as negative visual impacts from the shoreline. Therefore, the Commission imposes Special Condition No. 3 requiring the applicant to relocate the accessway further inland if necessary.

No Future Protective Device for Resort Facilities or Residential Development

The Treasure Island development site is a blufftop ocean front lot. In general, blufftop lots are inherently hazardous. It is the nature of bluffs to erode. Bluff failure can be episodic, and bluffs that seem stable now may not be so in the future. Even when a thorough professional geotechnical analysis of a site has concluded that a proposed development is expected be safe from bluff retreat hazards for the life of the project if proper drainage controls are implemented, it has been the experience of the Commission that in some instances, unexpected bluff retreat

episodes that threaten development do occur (5-84-046 & 5-98-039: Denver/Canter; 5-95-023 & 5-99-056: Bennett; 6-88-515: McAllister). In the Commission's experience, geologists cannot predict with absolute certainty if or when bluff erosion on a particular site may take place, and cannot predict if or when a structure or property may become endangered.

Section 3.2 (Physical Resources Policies) of the Treasure Island certified LCP sets forth policies related to geologic hazard and blufftop development. Policy 3.2.2-1 requires structures for human occupancy to conform to geotechnical design mitigations to minimize risk to life and property. Section 3.2.2-6 requires development adjacent to the coastal bluff to be located and designed to *"minimize the alteration of the existing landform and the construction of artificial devices that...would substantially alter existing landforms..."* The proposed development could not be approved as being consistent with the certified LCP if projected bluff retreat would adversely affect the proposed development and necessitate construction of a shoreline protection device.

The Coastal Act limits construction of protective devices because they have a variety of negative impacts on coastal resources including adverse affects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach. The Commission may only allow a shoreline protective structure if: (1) there is an existing principal structure in imminent danger from erosion; (2) shoreline altering construction is required to protect the existing threatened structure; and (3) the required protection is designed to eliminate or mitigate the adverse impacts on shoreline sand supply.

Bluff retreat rate is discussed in a supplemental consultation prepared by Law Crandall dated April 19, 2000 (Exhibit 20). The annual rate of retreat at the project site was evaluated for a 50-year period with historical records from 1937 to 1997. In their analysis, the consultant states that *"the greatest amounts of erosion over the 50-year evaluation period (1937-1997) were measured in areas where the bluff is composed of terrace deposits and artificial fill and uncontrolled drainage has been allowed to flow over the bluff face."* The report adds, *"the erosion of the bluff can be minimized to less than 0.25 inch per year if proper controls are placed on surface water runoff."* Lastly, the consultant notes the following:

"...there has been very little bluff retreat of the bluff base in areas in which the San Onofre Breccia forms the lower part of the bluff. Furthermore, because the lower part of the bluff is exposed to wave erosion, bluff erosion appears to be much less important than erosion caused by surficial water runoff."

As stated above, the applicant's geotechnical consultant has indicated that the site is stable and that no shoreline protection devices (blufftop structures or seawalls) will be needed. If not for the information provided by the applicant that the site is safe for development, the Commission could not conclude that the proposed development would not in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. However, the record of coastal development permit applications and Commission actions has also shown that geologic conditions change over time and that predictions regarding site stability based upon the geologic sciences are inexact. Even though there is evidence that geologic conditions change, the Commission must rely upon, and hold the applicant to their information which states that the site is safe for development without the need for protective devices.

Therefore, the Commission imposes Special Condition 4, which requires the applicant to record a deed restriction against the property placing the applicant and their successors in interest on notice that no protective devices shall be permitted to protect the resort facilities and future residential development.

Assumption of Risk

As stated previously, the applicant is proposing the development of a resort and residential community on a 30-acre coastal blufftop lot. There is evidence regionally that coastal bluffs in Orange County are subject to ongoing erosion and that geologic impacts are not always predictable based upon a geologic investigation. Although adherence to the geotechnical consultant's recommendations and the required setback at the time of development will minimize the risk of damage from erosion, the risk is not eliminated entirely. Therefore, Special Condition 5, the standard waiver of liability condition, has been attached as a special condition of approval. By this means, the applicant is notified that the subdivision is located in an area that is subject to wave attack and bluff erosion that can damage the applicant's property. The applicant is also notified that the Commission is not liable for such damage as a result of approving the permit for development. In addition, the condition insures that the applicant will indemnify and hold harmless the Commission for any damages related to the Commission's approval of the coastal development permit. Finally, recordation of the condition insures that future owners of the property will be informed of the risks and the Commission's immunity from liability.

Conclusion

The Commission recognizes that the proposed project arguably involves grading in excess of the amounts previously estimated in the LCP and proposes grading beyond the delineated bluff edge. The Commission also recognizes that the LCP data was conceptual in nature, pending refinement through the CDP process. For the reasons provided in this section, the Commission finds the project in consistent with the intent of the certified LCP. The Commission further finds that the proposed project is consistent with the grading and landform alteration policies of the certified Treasure Island LCP.

E. Marine Resources

At the substantial issue hearing, the Commission found that the project raised questions of consistency with the marine resource policies of the certified LCP with regard to implementation of the Resource Management Program and designation of the State Marine Park. The Commission found that although the City had approved CDPs for each of these proposed actions, there was no permit condition to CDP Nos. 99-75 or 99-76 requiring they be carried out. Therefore, the Commission must ensure project consistency with the LCP through the current coastal development permit.

Also, because the marine area of the Treasure Island site includes the shoreline seaward out to 1200 feet offshore, the Coastal Act is applied as the standard of review. However, no development below the mean high tide line is proposed as a part of the current permits (A-5-LGB-00-078 and A-5-LGB-00-079). Therefore, the policies of the Treasure Island certified LCP are applied as the standard of review.

Treasure Island LCP Policies

Section 3.1 of the LCP sets forth general marine resources policies for the Treasure Island development. Sections 30230, 30231 and 30235 of the Coastal Act are directly incorporated within this section of the LCP.

Policy 3.1-1 incorporates Section 30230 of the Coastal Act, which states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Policy 3.1-2 incorporates Section 30231 of the Coastal Act, which states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Policy 3.1-3 incorporates Section 30235 of the Coastal Act, which states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

The following policies are also provided in Section 3 of the LCP, supplementing those established in the Coastal Act:

Policy 3.1.2-5 The redevelopment of the LCP shall serve, where possible, to improve conditions on the site and adjacent marine resource areas. To this end, the RMP shall provide for the protection of biological productivity and water quality within the LCP area.

Policy 3.1.2-6 Propose to the State Fish and Game Commission that it designate a Treasure Island Marine Reserve from the shoreline seaward out to 1,200 feet offshore and propose its candidacy for Ecological Reserve status to the State Department of Fish and Game, the State Fish and Game Commission, and the California State Lands Commission.

Chapter 9 of the certified LCP outlines the Resource Management Program (RMP) for the Treasure Island development. The RMP is intended to implement the Resource Protection Policies set forth in Chapter 3. The Marine Resource Management Plan (MRMP) is a component of the RMP. As discussed below, the MRMP contains policies and mitigation measures for the protection and enhancement of the marine habitat at Treasure Island.

Analysis of Marine Resource Issues

According to the Final Environmental Impact Report (FEIR) for the Treasure Island Development, the shoreline features of the project site and vicinity include: *“coastal bluffs, rocky headlands, and intertidal rocky outcrops extending seaward from the base of the bluffs, pocket beaches between the headlands, and open coastal sandy beaches located at the eastern and western boundaries of the project area.”* More specifically, as illustrated in Figure 9.2-3 of the certified LCP, the Treasure Island City-designated Marine Reserve area includes the 3.5 acres of rocky shoreline habitat, 5 acres of sand beach and 31 acres of open ocean and reef habitat within an approximately 1730' long by 1200' wide stretch of coastline next to the project site (Exhibit 21).

The FEIR states, *“the intertidal area is suggestive of a disturbed intertidal area, possibly from the effects of high visitor use.”* As such, the FEIR incorporates Project Design Features and Mitigation Measures intended to protect, manage and monitor the marine environment. The LCP incorporates the provisions of the FEIR into the policies identified above. Two primary features of the LCP's Marine Resource Protection Requirements are the development of a Shoreline Resources Management Plan and the designation of the coves and tidepools within the Marine Reserve as an Ecological Reserve.

As part of the overall development scenario for the Treasure Island Resort project, the property owner (Five Star Resort, LLC) applied for two City-issued project specific CDPs--the first for a Shoreline (Marine) Resource Management Plan and the second for designation of the site as a State of California Marine Park. The City held multiple public hearings prior to their final determination on each of the proposed projects. On December 1, 1999, the City of Laguna Beach conditionally approved CDPs No. 99-78 and CDP No. 99-79, thereby 1) adopting the Resource Management Plan (RMP), which includes the Marine Resource Management Plan and 2) allowing designation of a State Marine Park (Exhibits 22 and 23). The applicant's proposals were found to be consistent with all applicable provisions of the certified LCP and the Development Agreement for the proposed development. These permits were not appealed to the Commission; therefore the City's actions regarding the RMP and State Marine Park Designation are final.

At the substantial issue hearing, the appellants addressed the adequacy of the Marine Resource Management Plan as it relates to restoration of the degraded marine habitat. However, the Commission recognizes that the LCP did not require restoration as part of the proposed

development. While the Commission recognizes that the City-issued CDPs are consistent with the certified LCP, the permits must be linked to the currently proposed project in order to ensure that overall development approved by the Commission will conform to and implement the marine protection provisions of CDP Nos. 99-78 and 99-79.

Implementation of Resource Management Plan

The RMP approved by CDP No. 99-78 requires compliance with the *Treasure Island Marine Resources Management Plan* (MRMP) prepared by Coastal Resources Management, July 1999. The MRMP includes the following components:

- Nominate the Treasure Island Marine Habitats and Resource for designation as a State Marine Manage Area (MMA);
- Design and implement public education and enforcement programs for the MMA;
- Conduct environmental studies in support of the MMA designation process and
- Conduct a five-year marine resources monitoring program to determine the effectiveness of MMA management of the Treasure Island marine resources.

As shown in Exhibit 22, the City incorporated these components of the MRMP as special conditions of CDP No. 99-78. Conditions require management of marine resources to minimize visitor impacts, including enforcement of no-take regulations, establishment of a signage program, education of the public and resort guests and monitoring the resources to help prevent environmental degradation. The RMP ensures monitoring and policing of marine resources 24 hrs/day, 7 days/week and also requires the applicant to pay for the cost of all engineers, geologists, archaeologists, paleontologists or other similar authorities or specialists required by the Mitigation Monitoring Program. The Mitigation Monitoring Program involves a 5-Year program to evaluate the effectiveness of the designation, signage and enforcement of Reserve policies on the marine resources. Also, the CDP requires the applicant to dedicate the public open space (including the marine reserve and sand beach) and construct the planned public and visitor serving facilities prior to construction of residential development and prior to or concurrently with the private resort development.

The RMP is inadequate to monitor the effects of storm water on the offshore habitat. As such, the development approved by the current Commission action would potentially contribute to an adverse affect on the marine reserve area. More specific testing is required to identify effects of stormwater runoff on the marine environment. Therefore, the Commission imposes Special Condition No. 9, which requires the applicant to submit a Stormwater Monitoring Plan that include methods for acquiring the type of data necessary and appropriate to allow for analysis of stormwater impacts, if any, on the marine resources. (Water quality effects on marine resources will be further discussed in the subsequent section.)

Complete funding has not been committed to implementation of the RMP. However, the City was presented a detailed cost proposal for implementation of the MRMP in November 1999 and the City Manager has indicated that the required funds to start the first component of the Plan are included in the City's budget for the 2000-2001 fiscal year. Funding must be budgeted annually.

The Commission recognizes that the RMP is an important component of the Treasure Island Project. The offshore resources must be preserved and protected wherever possible. The RMP includes provisions to accomplish the goals of the LCP. Therefore, the Commission imposes Special Condition No. 6, which requires the applicant, in concurrence with the City, to implement the adopted RMP as a condition of project approval.

State Designation of Marine Park

CDP No. 99-79, which authorized the City to pursue the designation of a State Marine Park, was conditionally approved by the Laguna Beach City Council on December 1, 1999 (Exhibit 23). As stated earlier, this approval was not appealed. However, at the substantial issue stage for CDP Nos. 99-75 and 99-76 in April 2000, the appellants noted that the site had not yet been nominated for State Marine Park designation. According to the City, the State Department of Fish and Game (DFG) is currently reconstructing their classification system in a manner which may affect the Treasure Island application process. As such, the City has held off in submitting the application until the classification system has been finalized. Commission staff has confirmed this through telephone conversations with staff of the DFG and recognizes that the changing process may have affected the City's decision to submit an application at an earlier date. However, the Commission recognizes that designation as a State Marine Park is an essential part of the proposed project and therefore imposes Special Condition No. 6. This condition requires the applicant to nominate the Treasure Island offshore site, as depicted in Exhibit 21, to the State Department of Fish and Game for designation as a State Marine Park. While this does not guaranty that the site will be designated, it at least guaranties that the site will be nominated, as required by the certified LCP.

Conclusion

Implementation of the Marine Resource Management Plan, as revised to include monitoring of stormwater runoff, and guaranteed nomination of the State Marine Park, will maintain and protect the marine habitat at the subject site. Therefore, as conditioned, the Commission finds the proposed project to be in conformance with marine resource policies of the certified LCP.

F. Water Quality

At the substantial issue hearing, the Commission found that the City's approval of the Treasure Island development raised no substantial issue of consistency with the water quality policies and standards set forth in the certified LCP. The Water Quality Management Plan (WQMP) and supplemental water quality measures, referred to as "*Attachment A*," were determined to be sufficient to mitigate any potential adverse effects on water quality that may result from the proposed project (Exhibit 24). Nonetheless, this section provides a supplemental analysis of water quality issues and evaluates the effectiveness of the measures proposed by the applicant. Further review has identified the following items requiring additional analysis: nuisance flow diversion, jurisdictional responsibility for future amendments to CDP, and effects on marine resources.

Treasure Island LCP Policies

Section 3.1.1 of the LCP identifies policies for water quality management for the Treasure Island development. As illustrated below, Policies 7 through 13 pertain to the current application:

- | | |
|------------------------|--|
| <i>Policy 3.1.1-7</i> | <i>A Water Quality Management Plan (WQMP) shall be prepared for the LCP Area in accordance with Orange County's Drainage Area Management Plan, and LCP Chapter 11.</i> |
| <i>Policy 3.1.1-8</i> | <i>All drainage facilities and erosion control measures within the LCP Area shall be designed and constructed to protect coastal/marine resources in accordance with the Orange County Flood Control District Design Manual and Title 22, "Excavation, Grading and Filling," of the Laguna Beach Municipal Code.</i> |
| <i>Policy 3.1.1-9</i> | <i>Urban Runoff from the LCP Area shall comply with all existing and applicable Federal, State, and local water quality laws and regulations.</i> |
| <i>Policy 3.1.1-10</i> | <i>An Erosion Control Plan shall be prepared by a registered Civil Engineer prior to any construction within the LCP area, in accordance with Title 22, "Excavation, Grading and Filling," of the City of Laguna Beach Municipal Code.</i> |
| <i>Policy 3.1.1-11</i> | <i>A Storm Water Pollution Prevention Plan (SWPPP) shall be prepared by a registered Civil Engineer. This SWPPP shall comply with the State Water Resources Control Board's General Construction Activity Storm Water Permit.</i> |
| <i>Policy 3.1.1-12</i> | <i>Sediment basins (e.g. debris basins and/or silt traps) shall be installed in conjunction with all initial grading operations and shall be maintained throughout their intended lifetimes to remove sediment from the surface runoff.</i> |

Policy 3.1.1-13 As applicable, final designs for grading and excavation projects shall:

- a) include measures to protect water quality in adjacent areas during construction and maintenance activities;*
- b) be consistent with Section 404 of the Federal Clean Water Act (formerly Federal Water Pollution Control Act) and Section 10 of the Federal Rivers and Harbors Act of 1899; and*
- c) not adversely affect water quality or marine habitats.*

In addition, Policy No. 15 of the Flood Control and Hydrology Policies of Section 3.1.2 states the following:

Policy 3.1.2-15 Structural water quality protection measures shall be provided for on-site drainage of paved areas. Structural measures may include oil/water separators, filters, greenbelt strips, and/or other equivalent methods.

Analysis of Water Quality Issues

The Implementing Actions Program (Specific Plan) of the Treasure Island LCP contains a Resource Management Program (RMP) which provides implementing measures to uphold the policies identified above. Consistent with Section 9.3.2. of the Resource Management Program, subsection (2), the applicant has submitted a *Water Quality Management Plan (WQMP)*, dated June 22, 1999 which identifies “*specific source control measures (i.e. Best Management Practices or ‘BMPs’)* to reduce the discharge of pollutants to stormwater facilities during all phases of project development.” In addition, the applicant has submitted an attachment referred to as *Attachment A*, which further specifies and augments the Treasure Island WQMP (Exhibit 24).

Water Quality Standards Governing the Project

The project is subject to regulations of other governing agencies with regard to stormwater runoff associated with new development during and after construction. Relevant permits include the County of Orange Municipal NPDES Stormwater Permit No. CA 8000180 and the State Water Resources Control Board (SWRCB) NPDES General Permit No. CAS000002, Waste Discharge Requirements (WDRs) for Discharges of Storm Water Runoff Associated with Construction Activity, as described below.

The WQMP and the proposed water quality measures specified in *Attachment A* are consistent with the provisions of the County of Orange Municipal NPDES Stormwater Permit No. CA 8000180, issued to the County of Orange and co-permittees, including the City of Laguna Beach, and the Orange County Drainage Area Management Plan (OC DAMP), submitted to the Regional Boards for compliance with the NPDES permit by the County and co-permittees. The OC DAMP is essentially the implementing program for the NPDES permit. It was developed based upon the principle criterion identified in the NPDES permit, that being the term Maximum Extent Practicable or “MEP.” The NPDES permit defines “MEP” as follows:

“MEP” means to the maximum extent practicable, taking into account equitable considerations of synergistic, additive, and competing factors, including but not limited to, gravity of the problem, fiscal feasibility, public health risks, societal concern, and social benefits.”

The co-permittees have the responsibility of weighing economic, societal and equity issues as they define the policies and standards to be employed in implementing the OC DAMP program.

The OC DAMP includes a section focused on New Development Control (Section 7.0), which requires new development (such as Treasure Island) to incorporate non-structural, routine structural, and special structural BMPs *“to minimize the amount of pollution entering the drainage system.”* The following are examples of each type of BMPs, proposed for incorporation per *Attachment A* into the Treasure Island Development (not a complete list):

Non-structural: Fertilizer and Organic Soils Management, street sweeping and litter pick-up

Routine structural: Inlet trash racks, trash enclosures, energy dissipaters, irrigation technology (drip irrigation, flow sensors, rain shutoff devices) and landscape filtration (surface runoff from park and hotel courtyard directed to permeable landscaped areas)

Special structural: Nuisance flow diversion, storm drain sediment & hydrocarbon separator devices, water quality inlet media filters

Section 4.2 of the *Mitigation Monitoring Program for the Treasure Island Resort Community Environmental Impact Report*, adopted in full as standard conditions of approval by the City of Laguna Beach in CDP 99-75, and incorporated by reference in Section IV (A) of the current report, contains Standard Condition 2-3 which states the following:

SC-2-3 Water Quality Management Plan. Prior to issuance of a grading permit, a Notice of Intent (NOI) to comply with provisions of the State Water Resources Control Board's General Construction Activity Storm Water Pollution Prevention Plan (SWPPP) will be prepared by a registered civil engineer and will be available on site throughout construction activities.

Prior to issuance of building permits or precise grading permits, whichever comes first, the applicant shall submit for approval by the Director, City of Laguna Beach Community Development Department, a Water Quality Management Plan specifically identifying Best Management Practices (BMPs) and other appropriate structural measures that will be used on site to control predictable pollutant runoff.

This plan shall identify the structural and non-structural measures whenever they are applicable to the project and the assignment of long-term maintenance responsibilities (specifying the applicant, parcel owner, maintenance association, etc.) and shall reference the location of structural BMPs. These source control measures shall include such devices as oil/water separators, filters, first flush diversion, infiltration trenches, or

other methods as approved by the Director, City of Laguna Beach, Community Development Department.

Pursuant to Condition 34 of Resolution No. 98.033, the Water Quality Management Plan shall be required prior to approval of the final tract map. The Landowner/ Master Developer shall construct a system to divert summer nuisance water to the sewer system upon concurrence by the water agency with jurisdiction over the project site. All of the site's non-residential landscape irrigation shall utilize a reclaimed water distribution system, which shall be reviewed and approved by the water agency with jurisdiction over the project site. Storm drainage inlets on Coast Highway shall be designed to accept 100 year flows, and the on-site drainage system must accept and convey 100 year flows from Coast Highway through the site to the beach. In addition, the on-site drainage system shall be designed for a 100-year storm event in order to reduce blufftop erosion.

At the substantial issue stage, the appellants raised the issue of Best Available Technology "BAT", which is associated with the State Water Resources Control Board (SWRCB) NPDES General Permit No. CAS000002, Waste Discharge Requirements (WDRs) for Discharges of Storm Water Runoff Associated with Construction Activity. This permit is applicable to stormwater discharges associated with construction activity, which result in disturbance of 5 or more acres of land. Regulations, where applicable, require the discharger to obtain coverage under the State General Construction Activity Permit and to implement Best Available Technologically Achievable (BAT) and Best Conventional Pollutant Control Technology to reduce or eliminate storm water pollution. As previously stated, the Commission did not find substantial issue with regard to water quality.

The current project involves 30-acres of land and therefore is subject to the above-referenced NPDES permit for stormwater discharges associated with construction activity. Standard Condition 2-3 of the *Mitigation Monitoring Program* requires an NOI to comply with the provisions of the State Water Resources Control Board's General Construction Activity Storm Water Pollution Prevention Plan to be prepared by a registered civil engineer, which will be available on site throughout construction activities.

The Commission finds that the applicant's compliance with the provisions of the SWRCB General Construction Activity Permit, required by conditions incorporated by reference here, will serve to control pollutants in stormwater discharge associated with construction activity in a manner consistent with the certified LCP. Additionally, the Commission finds that the applicant's compliance with the provisions of the County of Orange Municipal NPDES Stormwater Permit through their implementation of the WQMP and water quality measures, as conditionally approved below, is consistent with the applicable policies of the certified LCP.

Dry Weather Nuisance Flow Diversion

At the substantial issue phase, the appellants acknowledged that the project included a plan to divert the project's nuisance flows, but contended that an agreement between the City and local sanitation district had yet to be reached. The City originally responded to these contentions by stating, "*the City has the responsibility for sewage treatment, and...our treatment facility has the capacity to process the low flow storm water and the flows from 'first flush' events.*" City staff

also pointed out that implementation of water quality measures #1-10 contained in *Attachment A* was a condition of approval of the subject development and Measure # 6 specifically requires nuisance flow diversion. However, the Commission recognizes that the intent of this particular measure is uncertain as proposed, due to the use of a variety of non-synonymous terms interchangeably, as discussed below.

The measure proposes “Dry Weather Diversion.” Flows occurring during “dry weather” are typically those associated with nuisance runoff (nuisance runoff includes flows from irrigation, car washing, and light precipitation). Nuisance flow that occurs during dry weather, is however, defined parenthetically in *Attachment A* #6 as “when rainfall is less than $\frac{3}{4}$ of an inch on the site during a 24-hour period”. The intent behind the proposed measure is further confused when the language then specifies that the diversion system will be designed to “allow the City to process the *first flush* and will extend the nuisance diversion up to the capacity of the sewer system on a year round basis”. Commission staff has since confirmed that it is the applicant’s intent to divert dry weather nuisance flow (estimated to be approximately 5,000 - 6,000 gallons per day) from the project site and from the 60 acre neighborhood above the development to the wastewater collection system for ultimate treatment in the Coastal Wastewater Treatment Plant on a year-round basis (Exhibit 25).

To ensure that the nuisance flow diversion measure can and will in fact be implemented, Commission staff has contacted the General Manager of the South Coast Water District. Through verbal and written communication, he has confirmed that capacity currently exists at the treatment plant to accept the nuisance flow and has stated that the District will commit to accepting up to 10,000 gallons per day year round from the Treasure Island development site once the facilities have been upgraded accordingly (Exhibit 26).

In order to more clearly define the requirements of the proposed nuisance flow diversion measure, the Commission finds it necessary to impose Special Condition No. 7. This condition requires the applicant to obtain a statement from the South Coast Water District, verifying the District’s capacity and commitment to accept nuisance flow runoff (up to a maximum of 10,000 gallons per day (GPD), on a year-round basis from the Treasure Island site, and the 60 acre drainage area above the site, upon project completion, for treatment in the wastewater collection system at the Coastal Wastewater Treatment Plant. Diversion shall commence upon completion of the project, and prior to the opening of the resort, and shall continue for the life of the development.

The Commission finds that the applicant’s compliance with Special Condition No. 7, which more clearly defines the proposed Measure # 6 of *Attachment A*, will further ensure that the proposed development is in compliance with LCP provisions which address the control of urban runoff from the development. As such, the applicant will be required to divert nuisance flows on a year-round basis in accordance with the provisions of the Treasure Island certified LCP.

Responsible Entity for Sewer, Storm Drain and Diversion and Sediment Removal Systems

If any changes to the Nuisance Flow Diversion agreement specified above in Special Condition No. 7 are proposed, an amendment to the current coastal development permit is required. The Commission imposes Special Condition No. 8 to ensure that the appropriate entity is granted the authority to handle the amendment. The amendment will be handled by an entity granted the

authority to act on behalf of the Homeowners Association and the Resort Owner/Operator in all matters pertaining to sewer, storm drain and diversion and sediment removal systems at the project site.

Water Quality Effects on Marine Resources

The applicant has included the document, *The Marine Biological Resources and Impact Assessment, Treasure Island Destination Resort Community*, prepared by Coastal Resources Management, for LSA Associates Inc. as part of the *Marine Resources Management Program* for the proposed project.

Section 3.2 of the Impact Assessment discusses Operational Impacts associated with long-term operation of the Resort Center on shoreline resources. Stormwater discharge is identified as a potential source of adverse impact on shoreline resources. Mitigation measures proposed to offset potentially significant impacts to marine resources include the preparation of a Shoreline Resource Management Plan (now referred to as the Marine Resources Management Plan). In addition to the proposed components of the Plan, a set of Recommended Details is included, which recommends that monitoring studies be conducted. The recommendation states, “*The purpose of this monitoring program will be to document the effectiveness of the designation, signage, and the enforcement of the Reserve policies on intertidal and subtidal marine life. This program will also assist in determining the impacts, if any, of stormwater discharges into the Reserve from the proposed drainage plan.*”

In order to fully implement PDF 4-2 and comply with the provisions of the Treasure Island Draft and Final EIR, Appendix D, Volume II of the Draft EIR (Marine Resources), and the Treasure Island LCP Part III- IAP, Section 9 Marine Resources, the *Marine Resources Management Plan*, (formally referred to as the Shoreline Resources Management Plan), the Commission requires that the applicant carry out a more extensive 5-year monitoring program focused on the rocky intertidal and subtidal resources of the Marine Reserve. The Commission finds the currently proposed 5–Year Marine Resources Monitoring Plan is not sufficient to uphold the recommended objective contained in the Impact Assessment—that being to determine impacts, if any, of stormwater discharges into the Marine Reserve from the proposed Drainage Plan.

Therefore, Special Condition No. 9 requires the preparation of a 5–Year Stormwater Monitoring Plan to accomplish this particular research objective. The plan should be prepared and/or reviewed by a qualified professional with expertise in the field of coastal water quality monitoring associated with stormwater discharge. The Plan should include methods for acquiring data appropriate to analyze the impact of stormwater on the marine resources in the City-designated Marine Reserve.

Update Water Quality Management Plan (WQMP)

Special Condition No. 10 requires that the Treasure Island Water Quality Management Plan (WQMP), dated June 22, 1999, be updated and revised to incorporate the water quality measures contained in *Attachment A* (Exhibit 24), and to be made consistent with all final conditions imposed by the Commission pertaining to the project's overall water quality management program.

This will include clarification of the dry weather diversion program and discussion of the study to determine the effects of stormwater discharges into the marine reserve.

Conclusion

Commission staff has reviewed the Water Quality Management Plan (WQMP) for Treasure Island prepared in June 1999, as well as the additional water quality measures and supplemental information provided by the applicant. The Commission's water quality staff has reviewed all proposed and conditionally imposed water quality measures and recommends three (3) additional special conditions to ensure that the proposed development does not adversely affect water quality. The conditions include acceptance of the nuisance flow diversion, revision of the WQMP, and appropriate monitoring of stormwater effects on the marine environment. As conditioned, the Commission finds that the Treasure Island project is in conformance with the water quality policies outlined in the certified LCP.

F. Public Access

Section 30604(c) of the Coastal Act requires that every coastal development permit issued for any development between the nearest public road and the sea include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3. The proposed development is located between the sea and the nearest public road. Additionally, the Commission must evaluate the project's consistency with the public access and recreation policies of the certified LCP.

Section 30210 of the Coastal Act states, in pertinent part:

...maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30213 of the Coastal Act states, in pertinent part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30252(6) states:

The location and amount of new development should maintain and enhance public access to the coast by...(6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

As they apply to the current project, the Treasure Island LCP contains the following policies related to public access and recreation:

- Policy 4.2.1-1 Lateral and vertical public coastal access and recreational opportunities shall be established within the resort development area and on open space, conservation, and recreation lands proposed for dedication to the public, including the Bluff-top Park, Sand Beach, and Marine Reserve.*
- Policy 4.2.1-6 Lower cost recreational uses, visitor-serving uses, and public access opportunities have priority over private residential uses.*
- Policy 4.2.2-1 Continuous opportunities for public upcoast and downcoast observation shall be provided by a continuous walkway and appropriately located overlook within the Bluff-top Park, along the new southerly ramp down to the Sand Beach, along the existing northerly ramp and stairway down to the Marine Reserve, and from various public areas within the Resort Center.*

The certified LCP also provides the following circulation policy, which addresses the public pedestrian walkway along the bluff edge:

- Policy 5.2.2-6 A public pedestrian walkway shall be improved to connect the new public pedestrian walkway adjacent to Coast Highway and the new public parking spaces within the south end of the Bluff-top Park/Resort Center to the oceanfront walkways and major landscaped areas of the Bluff-top Park and, via a new ramp, down to the Sand Beach.*
- Policy 5.2.2-7 The walkway described in (6) above shall be designed so as to:*
- a) be usable by City and/or County beach maintenance and emergency access vehicles, and*
 - b) be usable, either by itself and/or in conjunction with a parallel wheelchair ramp of reduced slope, to provide disabled persons...access to the Sand Beach.*

At the substantial issue hearing stage, the appellants contended that the project does not provide “lower cost visitor and recreational facilities,” or sufficient public recreational opportunities. The project provides a 3.31 acre marine reserve, a 2.45 acre sandy beach and a 7.51 acre public blufftop park. Historically, the entire site was off-limits to the public. With the proposed project, there will be pedestrian access and public parking. Parking fees at the subject site may not exceed the rate charged at adjacent beaches.

As proposed, the project will provide the following public amenities:

- 275 room hotel
- 5.76 acres of beach that is presently privately owned
- 7.51 acres of public park and open space with about 70 park benches, walking paths and view vantage points
- 70 public parking spaces with City regulated rates
- Four accessways to the beach

- Two public restroom facilities with showers
- A restaurant near the bluff and a second restaurant in the hotel
- A Marine Park with a Resource Management Plan to protect marine resources
- A landscape buffer along the entire frontage of the sit that includes a public pathway and a rest stop for pedestrians and cyclists using Coast Highway

The Commission finds that the project is consistent with the public access provisions of both the certified LCP and the Coastal Act, as it provides an appropriate distribution of lower cost recreation and visitor serving commercial uses at a site that was previously inaccessible to the public. Additionally, the amenities provided in the proposed project are in conformance with the Public Access and Recreation Plan illustrated in Figure 10.2-2 of the LCP and outlined in the LCP policies (Exhibit 27). The approved project provides public park land, public parking facilities and a resort hotel (including guest rooms, ballrooms, function rooms and meeting facilities), and conveys a fee interest in a privately owned sandy beach to the public.

In reviewing the public access provisions of the certified LCP in relation to the approved project, the Commission finds that the project is consistent with the policies and standards set forth in both the certified LCP and the Coastal Act. Therefore, the Commission finds the project consistent with Treasure Island LCP policies related to public access and recreation and Sections 30210, 30212, 30213 and 30252(6) of the Coastal Act.

H. Scenic and Visual Resources

Chapter 9 (Resource Management Program) of the LCP outlines objectives and criteria to implement the policies contained in Chapter 3 (Resource Protection Policies). At the substantial issue hearing stage, the appellants challenged conformance with the following RMP objectives as they pertain to coastal views:

Section 9.1.2-4 Provide and improve the adjacent portion of the Coast Highway Scenic Corridor to protect and enhance the existing public streetscape and views of the site and coastline.

Section 9.1.2-5 Provide three reasonable public view corridors through the resort community which while not precluding development within the boundaries of the corridor will require the maintenance of a preponderance of the existing ocean views through a constant-width corridor from residences above the Aliso Creek Plaza Shopping Center, Coast Highway, and Fred Lang Community Park.

Section 9.5 (Visual and Scenic Resource Protection Requirements) provides implementation measures for the protection of views and scenic resources. As stated above, the LCP requires the provision of three (3) public view corridors totaling 500 linear feet. The proposed project meets this requirement by providing two (2) view corridors totaling 550 linear feet, where two previously separate corridors are combined to form one larger corridor along the southern end of the property (Exhibit 16). As such, the project has been consolidated in the current project

submittal, thereby providing a 50' larger view corridor. Viewing opportunities of the coastline are also available throughout the project site.

Section 11.3 (Building Height Regulations and Standards) of the LCP sets forth maximum height envelopes for the Treasure Island development. The project plans demonstrate that the proposed project conforms to these height limitations. In fact, only fifty percent of the structures are proposed at an elevation above the Coast Highway frontage, whereas the LCP would allow up to seventy percent. In addition, the plans show that the project occupies less building site coverage than originally allowed through the certified LCP. Although the Resort Development Standards clearly state that there is no maximum building site coverage for the Resort Center Area, a more consolidated project is now proposed. As such, the project is preferable in that a more open space and greater public views are provided.

Although some obstruction of existing coastal views will occur, the Commission finds the proposed project to be consistent with the visual and scenic resources protection policies and standards of the certified LCP.

I. Community Character

The certified LCP contains the following policies related to community character and design:

- Policy 6.2.1-1 The design of the Resort Center Hotel structures shall fall with the level of Coast Highway and the existing topography. Multi-storied structures, including all projections and appurtenances, shall be varied in vertical and horizontal dimensions so that building heights, setbacks, and site coverages provide visual interest and an interplay of light, shadow, and materials appropriate to the building forms. The combination of building heights, site coverage, and setbacks should, where possible, break up building mass and create a terraced effect by placing lower structures in front of higher structures.*
- Policy 6.2.2-2 The Resort Center architecture shall be distinctive and provide a signature statement for the Laguna Beach community—projecting the resort's significance for business meetings and community banquets.*
- Policy 6.2.2-3 To accommodate the guest rooms and required meeting/banquet space within the vertical and horizontal limits of the sites, the resort shall step down from the level of Coast Highway to the elevation of the Bluff-top Park.*
- a) The architecture of the Resort Center shall be set back at least 25 feet from the bluff edge, and step down in increments which emulate the three dimensional character of the existing slope.*
- Policy 6.2.2-11 The architectural character of the Resort Center shall be distinctive and outlined in design guidelines that shall be set forth, at least generally, in the LCP's Implementing Actions Program (Specific Plan).*

- Policy 14.2.1 ...Throughout the resort, there is an intent to provide a village scale by attention to detail and a general pedestrian orientation.*
- Policy 14.2.2 The architectures will be a mix of styles and forms drawn from eclectic architectural tradition of Laguna Beach and seaside resort areas.*
- Policy 14.2.3 ...An emphasis on natural materials, such as wood, tile, stone and cement plaster and a strong relationship between indoor and outdoor spaces is encouraged...*
- Policy 14.4 The architecture of the Resort Center should provide a distinctive image and blend comfortably with the natural features of the site, including a horizontal and stepped-back design and an abundance of landscaping.*
- Policy 14.4.2-4 Long continuous rows of buildings should be avoided. The hotel structure should be broken by open spaces, varied roof treatments or staggering of individual units. Buildings that maximize permitted heights should contain elements with heights less than the maximum and incorporate more than the minimum setback.*

At the substantial issue hearing stage, the Commission recognizes that issues of design are largely subjective and are not a precedential issue of statewide concern. The Commission does not generally question design decisions which are local in nature. In addition, regardless of any issues of conformity with advisory, non-binding guidelines, the project plans are consistent with the development standards and policies of the certified LCP. Consequently, the Commission finds the proposed project consistent with the development standards related to height, bulk, setback and view corridor requirements of the Treasure Island certified LCP.

J. Local Coastal Program

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with the Chapter 3 policies of the Coastal Act.

On August 13, 1998, the Treasure Island Local Coastal Program (LCP) was approved as a project specific amendment to the City of Laguna Beach Local Coastal Program. The site was previously an Area of Deferred Certification pending the resolution of public access concerns.

K. California Environmental Quality Act

Section 13096 of the Commission's regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of

the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the applicable policies of the Treasure Island certified LCP. As conditioned to require 1) retention of the local government conditions of approval; 2) submittal of revised plans demonstrating conformance with the required blufftop setback; 3) relocation of the blufftop accessway as needed; 4) recordation of an assumption-of-risk deed restriction; 5) implementation of the Resource Management Plan (RMP) and nomination of the State Marine Park; 6) grant of responsibility for sewer, storm drain and diversion; 7) a written agreement for acceptance of low flow diversion of project runoff; 8) submittal of revised Marine Resources Monitoring Plan and 9) submittal of revised Water Quality Management Plan (WQMP), there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, can be found consistent with the requirements of the Coastal Act to conform to CEQA.